

(c) For initially constructed cable systems the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber through the proposed effective date of the closing of the transaction assigning or transferring control of the cable system. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the cable system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

(d) Cable operators seeking to assign or transfer control of a cable system are required to certify to the local franchise authority that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the franchise authority at the time a cable operator submits a request for transfer approval to the local franchise authority. If local transfer approval is not required by the terms of the franchise agreement, certification of compliance with the three-year holding requirement must be submitted to the franchise authority no later than 30 days in advance of the proposed closing date of the transfer or assignment.

(1) Receipt by the local franchise authority of a certification containing a description of the transaction and indicating that the cable system has been owned for three-years, or that the transferor has obtained or is seeking a waiver from the Commission, or that the transaction is otherwise exempt under this section, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.

(2) Franchise authorities questioning the accuracy of a certification filed pursuant to this section must notify the cable operator within 30 days of the filing of such certification, or such certification shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(e) If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfers shall be considered part of the original transaction for purposes of measuring the three-year holding period.

(1) In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within 90 days of the closing date of the original transfer and the closing date of the subsequent transfer must be no later than 90 days following the grant of transfer approval by the local franchise authority.

(2) If local transfer approval is not required by the terms of the cable franchise agreement, then a subsequent transfer must be completed within 180 days of the date of the closing of the original transaction in order to qualify as part of the original transaction.

(f) Paragraph (a) of this section shall not apply to:

(1) any assignment or transfer of control of a cable system which is not subject to Federal income tax liability under the Federal Income Tax Code;

(2) any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any Federal agency, any State or political subdivision thereof or any franchising authority;

(3) any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, the seller, assignor or transferor.

(g) The Commission will consider requests for waivers from the three-year holding requirement, consistent with the public interest, and will grant waivers in appropriate cases of default, foreclosure and financial distress. Waiver requests under this section should be filed in accordance with the special relief procedures set forth in § 76.7. Commission waivers will not become effective, however, unless local franchise authority approval of a transfer is obtained if such approval is required by the terms of the franchise agreement.

(1) The Commission will look favorably upon waiver requests involving multiple system operators or transfers of multiple systems if at least two-thirds of the subscribers of the systems being transferred are served by systems owned by the cable operator for three-years or more.

(2) Conditioned upon receipt of local franchise authority transfer approval, where such approval is required by the terms of the franchise agreement or applicable state or local law, transfers of cable systems serving 1000 subscribers or less shall be subject to a blanket Commission waiver.

(h) Cable operators may seek Commission review of franchise authority decisions regarding the application of the three-year holding period to a particular transaction pursuant to the special relief procedures set forth in § 76.7.

(i) Cable system operators seeking to assign or transfer a cable system after three-years must submit a copy of FCC Form 394 to the local franchise authority if franchise authority approval of the transfer is required by the terms of the franchise agreement.

(1) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon such transfer request.

(2) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Ownership

This Report and Order adopts regulations interpreting and implementing only the anti-trafficking and cross-ownership provisions of the 1992 Act, which: (i) establish a three-year holding period for cable systems, and (ii) prohibit cable operators from holding and MMDS license or offering SMATV service, apart from any franchised cable service, in portions of the franchise area served by the cable operator's cable system. The Further Notice of Proposed Rulemaking regarding horizontal ownership and channel occupancy limits seeks additional comment on various proposals prior to implementing these provisions of the 1992 Act.

With respect to the Further Notice of Proposed Rulemaking, I write separately to voice my concern regarding the importance of considering the horizontal and vertical ownership limits in context with the Commission's prior decisions on rate regulation and program access. Given the existing behavioral regulations imposed on vertically integrated cable operators and programming vendors, I emphasize that these cable ownership provisions will play a critical role in determining whether the future broadband network will ultimately belong to all multichannel competitors, including cable operators, to the extent that they remain able to invest and exercise creativity. Similarly, I will remain interested in the extent to which the channel occupancy rules permit future opportunities for investment and development of new ventures and programming. I am also concerned that these ownership rules -- as well as all the implementing regulations for the 1992 Cable Act -- incorporate sufficient flexibility to address the unique economic concerns of small operators and minority programmers in order to continue to foster a dynamic industry.

Concerning specific proposals contained in the Further Notice, I will be interested in seeing comment from the public on the merits of the proposed 25% limit on homes passed nationally, or another appropriate standard within the 20-35% range of homes passed. I am also interested in comment regarding the possibility of incorporating a provision for a higher horizontal ownership threshold where systems are minority controlled. With respect to the channel occupancy limits, I am especially interested in comments regarding our proposal to allocate additional channel capacity to vertically integrated programming services that are minority-owned.